IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 12992 of 2004

Between:

Hari Shankar S/o Subbuddi Kishan
R/o Nalagandla (Village) , Serilingampally (Mandal) Ranga Reddy (District)

..... PETITIONER

AND

The Land Acquisition Officer Hyderabad Urban Development Authority , at Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in not awarding interest @ 9% for the 1st Year and 15% thereeafter upto the date of payment on the total compensation amount payable and also deducting the Income Tax at source from the Interest in pursuance of the award No.3/2004 dt. 3/6/2004 as arbitrary, illegal and without jurisdiction and consequently direct the Respondent herein to pay the deducted income tax amount of Rs. 11,907/- and also further direct the Respondent to pay interest on the compensation amount @ 9% p.a from the date of taking possession i.e. 29/08/87 for a period of one year and thereafter @ 15% upto the date of payment i.e. 30/06/2004

For the Petitioner:MR.N.VASUDEVA REDDY, Advocate

For the Respondent.: GP FOR LAND ACQUISITION

The Court at the admission stage made the following :

THE HON'BLE MR JUSTICE A.GOPAL REDDY

W. P. No. 12992/2004

ORAL ORDER:

Petitioner's land to an extent of 8112 sq. yards in S.No.374 situate at Nalagandla village, Serilingampally Mandal, Ranga Reddy District was acquired along with some other land for the purpose of expansion of Ramachandrapuram Ring town, by the respondent, by issuing notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") followed by declaration under Sec. 6 of the Act. The Land Acquisition Officer after conducting due enquiry passed an award fixing the market value at Rs.16,000/- per acre and statutory benefits like solatium and additional market value. On passing the award by the Land Acquisition Officer, as there was a dispute with regard to payment of compensation in respect of petitioner's land in S.No.374, the matter was referred to Civil Court under Sections 30 and 31 of the Act in OP 158/89, which was disposed of on 7-9-1998, wherein it was held that the petitioner is entitled to receive compensation only to an extent of 8112 sq.yards in S.No.374. Dissatisfied with the award of compensation by the Land Acquisition Officer, some of the claimants filed a petition under Section 18 of the Act seeking reference. On such reference made by the Land Acquisition Officer, the reference court in OP No. 363/1993, basing upon the judgment of the High Court in AS No.2885/96 dt. 30-12-1998 and Supreme Court of India in SLP© No. CC-5575-5616/99 dt. 1-11-1999, enhanced the compensation from Rs.16000/- per acre to Rs. 12/- per sq.yard considering Exs.B-3 and B-4 by rejecting the claim of the claimants for compensation to the trees and also awarded interest on the enhanced compensation amount at the rate of 9% per annum from the date of taking possession till payment of excess amount and further awarded that the claimants are entitled to additional market value at the rate of 12% from the date of 4(1) notification to the date of passing award and solatium at the rate of 30% and rejected the claim for interest on additional market value and solatium. The petitioner could not avail the benefit of reference under Sec. 18 of the Act in view of the pendency of proceedings under Sections

30 and 31 of the Act and on coming to know of the disposal of OP No.363/93 dt.3-9-2001, the petitioner filed an application under Section 28-A of the Act on 29-10-2001 before the Land Acquisition Officer for due determination of the compensation in the light of the award passed by the reference court. The Land Acquisition Officer after conducting an enquiry, by his award No.3/2004 dt. 3-6-2004 re-determined the compensation payable to the petitioner fixing the market value of the land at the rate of Rs.12/- per sq.yard along with 30% solatium, 12 % additional market value from the date of notification ie., dt. 30-8-83 till the date of award dt. 29-7-87 and interest at the rate of 9% per annum on the enhanced compensation from the date of taking over possession ie., 29-8-1987 till the date of payment of enhanced compensation ie., upto 31-5-2004. Further it is ordered that compensation is ordered to be paid after deducting Income Tax as per the details shown in Annexure-I. Questioning the award, in so far as awarding interest at 9% from the date of taking possession till the date of payment of compensation and ordering deduction of income tax, the present writ petition is filed.

Learned counsel for the petitioner contends that once the compensation payable to the land acquired is fixed, the petitioner is entitled to interest at the rate 9% for a period of one year from the date of taking possession and thereafter at 15% upto the date of payment on the enhanced compensation including that of solatitum and additional market value, which are statutory benefits under the Act and Sec. 34 of the Act would be applicable to the award that is made by the Collector under sub-section(2) ofSec.28-A of the Act as held by the Apex Court in ***UNION OF INDIA V. PRADEEP KUMARI.*** He nextly contends that ordering deduction of income tax is contrary to the Law declared by this court in ***RANA PRATAP SINGH AND OTHERS V. LAND ACQUISITION OFFICER-RDO, HYDERABAD EAST DIVISION AND OTHERS .***

As seen from the award passed by the reference court in OP No.363/93, it is evident that an extent of Ac.388.28 guntas of land was acquired by HUDA under award No.2/87. Except the above OP rest of the matters were disposed of fixing the market at Rs.16/- per sq.yard after giving 1/3 deduction towards developmental charges. Aggrieved by the same, HUDA preferred appeals in AS Nos.2885/96 and batch, wherein this court fixed the market value after giving 30% deduction towards developmental value at Rs. 12/- per sq.yard. Accordingly, the appeals were allowed partly. Aggrieved by the same, HUDA carried the matter in appeal to the Supreme Court in SLP © Nos.5575-5616/99, which were dismissed. Following the orders passed by this court and Supreme Court, the reference court disposed of OP fixing the market value at Rs.12/-per sq. yard by considering Exs.B-3 and B-4.

Though petitioner and some of the land owners sought reference to civil court with regard to other lands covered by AS No.2885/96, the petitioner has not availed the remedy of benefit of reference under Section 18 of the Act as the dispute with regard to above land was not settled in favour of the petitioner. After OP No.158/89 was answered in his favour to the extent of 8112 sq.yards in S.No.374, the petitioner sought re-determination of the compensation in the light of the award passed in OP No.363/93, which resulted in passing the impugned award. Though the civil court awarded interest at the rate of 9% from the date of taking possession till the date of payment of excess amount in the OP, restricting payment of interest at 9% by the Land Acquisition Officer is not in accordance with the provisions of the Act.

The Apex Court after considering the provisions with regard to payment of interest under Section 28 and 34 in the case of ***PRADEEP KUMARI*** (1 supra) categorically held that Sec. 34 of the Act would be applicable to the award that is made by the Collector under Sub-Section (2) of Section 28 and it would be permissible for him to award interest under Section 34 on the additional amount of compensation awarded by him. Sec. 34 postulates award of interest at 9% per annum from the date of taking possession only until it is paid or deposited. Whereas proviso to section 34 envisages that if the said compensation awarded is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited by the date of such expiry, which is a statutory liability under the Act, which should follow like a shadow. Though the petitioner will have a remedy of seeking reference under Section 18 of the Act, to avoid further delay and to cause loss to the public exchequer, this court is inclined to award interest at the rate of that 15 % on expiry of one-year period on such compensation.

Coming to the next submission of the learned counsel that income tax cannot be deducted at source from out of the compensation amount payable is no longer res integra in view of the law declared by the Supreme Court in BIKRAM SINGH V. LAND ACQUISITION OFFICER followed by this court in the case of RANA PRATAP SINGH (2 SUPRA) that Land Acquisition Officer cannot make deductions at source.

For the reasons aforementioned, the writ petition is allowed.

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A.GOPAL REDDY,J

Dt. 28-9-2004

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To

1. The Land Acquisition Officer Hyderabad Urban Development Authority at Hyderabad

2. 2 CCs to the Govt., Pleader for Land Acquisition, High Court Buildings, Hyderabad. (OUT)

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